

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|-------------------------------|---|----------------------------|
| FO2GO LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | C.A. No. 15-101 (RGA) |
| |) | |
| TUMBLR, INC. and YAHOO! INC., |) | JURY TRIAL DEMANDED |
| |) | |
| Defendants. |) | |

ANSWER TO COMPLAINT

Defendants Tumblr, Inc. and Yahoo! Inc. (“Defendants”), through their undersigned counsel, herein respond to the Complaint of Plaintiff FO2GO LLC (“FO2GO” or “Plaintiff”). To the extent not specifically admitted herein, the allegations of the Complaint are denied.

PARTIES

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 1 of the Complaint and deny them on that basis.

2. Defendants admit the allegations contained in paragraph 2 of the Complaint.

3. Defendants admit the allegations contained in paragraph 3 of the Complaint.

JURISDICTION AND VENUE

4. Defendants admit that Plaintiff purports to plead a cause of action for patent infringement, and admit that this Court has subject matter jurisdiction over actions arising under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendants admit that they are Delaware corporations and do not contest personal jurisdiction in this Court for this action. Defendants deny the remaining allegations of paragraph 5.

6. Defendants do not contest personal jurisdiction in this Court for this action. Defendants deny the remaining allegations of paragraph 6.

7. Defendants do not contest that venue is proper in this Court for this action. Defendants deny the remaining allegations of paragraph 7.

8. Defendants do not contest personal jurisdiction in this Court or that venue is proper in this Court for this action. Defendants deny the remaining allegations of paragraph 8.

COUNT 1

(Patent Infringement of United States Patent No. 7,173,651)

9. Defendants incorporate the above paragraphs herein by reference.

10. Defendants admit that Paragraph 10 of the Complaint states the title, named inventor and issue date of U.S. Patent No. 7,173,651 (the “’651 patent”) that appear on the face of the ’651 patent, and that Exhibit A of the Complaint appears to be a copy of the ’651 patent. Defendants deny the remaining allegations contained in Paragraph 10 of the Complaint.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 11 of the Complaint and deny them on that basis.

12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 12 of the Complaint and deny them on that basis.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

PLAINTIFF'S PRAYER FOR RELIEF

Defendants deny any factual assertions contained in Plaintiff's prayer for relief, deny that Plaintiff is entitled to any relief in any form whatsoever from Defendants and specifically deny that Plaintiff is entitled to any of the relief requested in the Prayer for Relief.

AFFIRMATIVE DEFENSES

Defendants allege and assert the following defenses in response to the allegations of Plaintiff's Complaint, undertaking the burden of proof only as required by law. Defendants reserve the right to amend their Answer, or assert additional defenses, as additional information becomes available and/or is discovered.

FIRST AFFIRMATIVE DEFENSE
(Non-Infringement)

Defendants have not infringed and are not infringing any claim of the '651 patent.

SECOND AFFIRMATIVE DEFENSE
(Invalidity)

Each and every claim of the '651 patent is invalid for failing to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, including without limitation Sections 101, 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE
(Equitable Defenses)

Some or all of Plaintiff's claims for damages and other relief are barred by the doctrines of waiver, estoppel, laches and/or other equitable doctrines.

FOURTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of prosecution history estoppel.

FIFTH AFFIRMATIVE DEFENSE
(Limitations on Damages)

Plaintiff's claim for damages is barred, in whole or in part, under 35 U.S.C. §§ 286 and 287.

SIXTH AFFIRMATIVE DEFENSE
(No Injunctive Relief)

Injunctive relief for the alleged infringement of the '651 Patent is unavailable because any alleged injury to Plaintiff is not irreparable, the balance of hardships and public interest weighs against the grant of an injunction, and Plaintiff has an adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Defendants request the following relief:

- (a) A judgment that Plaintiff recover nothing by its Complaint;
- (b) A judgment that Plaintiff's Complaint be dismissed with prejudice and that each request for relief therein be denied;
- (c) Defendants recover attorneys' fees, costs, and expenses; and
- (d) Such other and further relief as the Court deems proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Stephen J. Kraftschik

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Attorneys for Defendants

April 24, 2015
8998345.1

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2015 I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on April 24, 2015, upon the following in the manner indicated:

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